

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**ROBERT W. CARLSON,**

**Defendant.**

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**CASE NO. 8:09CR307**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Findings and Recommendation (Filing No. 37) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to suppress (Filing No. 16), as amended (Filing No. 24). No objections have been filed to the Findings and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C).

The Defendant seeks an order suppressing evidence seized as a result of his December 7, 2008, traffic stop and the search of his residence on December 8, 2008.

Notwithstanding the absence of objections, under 28 U.S.C. § 636(b)(1)(C) the Court has conducted a de novo review of the record. The Court has read the parties' briefs and the transcript. The Court has also viewed the evidence.

**PROCEDURAL BACKGROUND**

This is a companion case to *United States v. Wiese*, 8:09CR325. Carlson is charged in the Indictment with conspiracy to distribute and possess with intent to distribute methamphetamine (Count I) and possession with intent to distribute methamphetamine (Count II). Wiese is charged in an Indictment with maintaining a residence used to distribute methamphetamine. An initial hearing was held on Carlson's motion on November 19, 2009. Carlson's hearing was then continued to November 30, 2009, on which date a

consolidated hearing was held on both Carlson's motion to suppress and Wiese's motion to suppress insofar as the motions relate to the search of the residence.

### **FACTUAL BACKGROUND**

Judge Thalken presents a detailed statement of facts. Briefly, on December 7, 2008, Nebraska State Patrol Trooper Paul Hazard was monitoring activity at a house in Gibbon, Nebraska, suspected of involvement in drug activity. An SUV left the residence and twice failed to signal a turn. Trooper Hazard stopped the SUV. A colloquy ensued during which Trooper Hazard wanted to assure himself that Carlson had no weapons, and during which Trooper Hazard became suspicious that Carlson was in possession of an object. Trooper Hazard frisked Carlson and found a bag of suspected methamphetamine in Carlson's jacket pocket. Carlson was arrested.

On December 8, 2008, Trooper Hazard and Kearney Police Officer Jason Fuller went to Carlson's and Wiese's Kearney residence seeking Wiese's consent to search the home. Wiese allowed the officers inside, consented to a search, and led the officers to the basement where contraband was found.

### **DISCUSSION**

Judge Thalken concluded: Trooper Hazard had probable cause to stop Carlson's vehicle; Trooper Hazard had reasonable suspicion to pat Carlson down; finding the bag of methamphetamine provided probable cause for seizure of the bag and Carlson's arrest; Wiese had common authority over the residence and voluntarily consented to the search of the residence.

Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Findings and Recommendation in their entirety.

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation (Filing No. 37) are adopted in their entirety; and
2. The Defendant's motion to suppress (Filing No. 16) as amended (Filing No. 24) is denied.

DATED this 22<sup>nd</sup> day of February, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge